Welcome to the sixth edition of the information governance bulletin

Our fortnightly bulletin about information governance and the work of the task force.

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Information Governance Bulletin

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This edition, we look at the protection and safeguarding of children and adults at risk.

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Updates from each of the task force groups on progress since the last edition.

FAQs 8
Details of where the frequently asked questions will be made available.

Audience

This bulletin is written for: Anyone who uses data for secondary uses: commissioners inside NHS England and within CCGs; data analytics providers; those working in clinical audit; and researchers, managers, clinicians, and patients.

This bulletin sets out the work that NHS England is carrying out on behalf of all NHS commissioners to overcome the information governance (IG) issues created by legal and organisational changes introduced by the Health and Social Care Act 2012. In previous editions of the bulletin, we have outlined how NHS England's *information governance task force* reports to the information governance transition board, chaired by the Director of Strategy and Intelligence, Christine Outram. This board in turn supports wider work led by Barbara Hakin, NHS England Chief Operating Officer, on information flows within the new commissioning system.

In this issue of the bulletin, we cover:

- Myths on data release in safeguarding
- Information Governance training
- Updates for the five work streams, including Section 251 and Invoice Validation

Myth busting: Child Protection and Safeguarding adults at risk

One of the areas of concern that several people have raised with us is whether the Health and Social Care Act 2012 has changed the rules in relation to sharing information for child protection and safeguarding vulnerable adults. Some NHS staff appear to be under the impression that they can no longer share information as part of safeguarding. In reality, the rules have not fundamentally changed and the sharing of information for the purpose of safeguarding individuals can still be done as set out here:

- The duties under the Children's Acts remain.
- Health and care professionals can disclose information for the purposes of safeguarding individuals provided that the proposed disclosure meets the **public interest test**. This test involves weighing up (a) the public interest of protecting individual children or vulnerable adults who are potentially at risk of harm against (b) the public interest of protecting their confidentiality and privacy, while taking account of the individual's wishes where these are known.
- The public interest test applies to both children and adults; however, it is particularly important in relation to safeguarding adults at risk, as currently there are no equivalent statutory provisions to those in place for children.
    - In the case of adults with capacity, their wishes should generally be respected: careful consideration will need to be given to override the wishes of individuals with capacity. Disclosures may still be made where the risk of harm to the individual is high and the professional has concerns about the individual being in a position of duress by those responsible for caring for them. There will be similar issues to consider in relation to young people (under the age of 16) who have competency to make decisions for themselves.
    - In the case of adults without capacity (as defined within the Mental Capacity Act 2005) decisions can lawfully be made on their behalf, based on an objective assessment of their best interest. Although the past and present wishes of an incapacitated adult need to be taken into account when making a best interests assessment, the decision needs to be made on the basis of the individual's current circumstances and needs, including, where necessary and appropriate,

referral to appropriate authorities.

- In making disclosures, professionals need to disclose information incrementally, starting with the minimal disclosure (viz., that there are concerns about a particular individual and identifying the key worker responsible for the individual) before disclosing any details about the nature of those concerns.
- In the case of children, the disclosure will be to someone within the child protection team. In the case of adults, it will be to the key worker responsible for the individual's care, who could be a social worker, a GP, or another health professional.
- The responsibility for making these disclosures rests with the senior responsible professional. Where the balance of public interests is unclear, the advice of the Caldicott Guardian should be sought.
- The disclosure and the reasoning behind the decision to disclose should be documented in the record of the individual and possibly also in an organisational disclosure log.
- An additional question that has arisen is in relation to the disclosure of data about a population or a group of children in order to assess risks to them as determined by a risk stratification tool. The advice in the bullet points above does not apply in this context. Here, data are being processed about individuals who are not confirmed as being at risk and who may not benefit from the processing of their data. For this reason, our general advice about risk stratification applies in these circumstances. The current version of our risk stratification advice can be downloaded here: http://www.england.nhs.uk/wp-content/uploads/2013/06/ig-risk-ccg-gp.pdf

- We are in the process of reviewing this advice, and will make an announcement via this bulletin when it has been published.

Further information about safeguarding is available from the following sources:

Children:
Department of Education: http://goo.gl/mbTvDy

HM Government – Information Sharing Guidance for Practitioners and Managers 2008: http://goo.gl/ft85E9

General Medical Council guidance:

http://goo.gl/ysWKhh and http://goo.gl/L3TcsZ

Adults:
Department of Health: http://goo.gl/rmI2Bl

Staff Education and Training

One of the recommendations from the second Caldicott review of information governance (Caldicott2) was the need for better education of staff in relation to information governance. The review heard concerns about the quality and efficacy of existing training arrangements for health and care professionals as well as for health service managers and administrators. There were also concerns about the more specific education needs of Caldicott Guardians, Senior Information Risk Owners (SIROs), information governance leads, and managers.

Currently, there is a wide variety of training available, including online training via the *IG*

Training Tool: https://www.igte-learning.connectingforhealth.nhs.uk/igte/index.cfm and independent sector providers; however, there is neither an approved curriculum nor agreed professional standards. This lack of agreed standards is an issue that the IG subgroup of the Informatics Service Commissioning Group (ISCG) is considering.

The government's response to Caldicott2 also charged Health Education England and NHS England with reviewing the IG educational requirements of staff and, in particular, specialist staff. This work is very important, as we will need to redevelop some of the information governance infrastructure that was lost in the restructuring of the NHS. We will keep you posted on developments.

Update from the five work streams

The five work streams of the Information task force are co-ordinated by the Chief Data Officer, Dr Geraint Lewis.

1. Data system design work stream

This work stream designs solutions to improve lawful access to data for commissioning purposes.

The system design work stream is systematically reviewing the business requirements in each commissioning area. We are working with business analysts from the HSCIC , IG experts, and legal advisors to (a)examine each requirement; (b) determine what (if any) are the legal constraints; and (c) to agree what the short, medium and long term solutions are. These solutions include, in the short term, legal support for flows of data via the section 251 regulations.

This work stream's priority areas are:

- Invoice validation;
- Integrated care and the use of risk stratification; and
- Direct commissioning, including specialised services, offender health, military health, and public health section 7a activities.

We have held a series of workshops on invoice validation (see below). We will shortly be sending invitations asking people to participate in IG workshops on **integrated care and risk stratification**. Please hold 4th or 8th of November for these workshops. If you would like to be sure your organisation is included in the invitation list for these workshops, please contact Jeanette Hall at jeanettehall@nhs.net.

Separately, staff from NHS England and the HSCIC are working to map data flows necessary to support the **direct commissioning** function of NHS England from an information governance perspective. So far, we have covered healthcare for the armed forces and healthcare for offenders. We will soon turn our attention to mapping public health data flows. This work is identifying a range of data flow issues, most of which are *not* related to information governance but rather to coding problems that are affecting such areas as invoice validation.

Section 251 Applications Update

The Health Service (Control of Patient Information) Regulations 2002, commonly known as the Section 251 regulations, allow the common law duty of confidence to be set aside in specific circumstances. These regulations therefore enable the processing of specified confidential patient information for defined purposes, where it can (a) be demonstrated there are no practicable alternatives, such as using anonymised data or obtaining patient consent, and (b) the processing is otherwise compliant with the Data Protection Act. The Confidentiality Advisory Group (CAG) of the Health Research Agency (HRA) provides independent, expert advice to the Secretary of State about non-research applications for Section 251 support.

The decision rests with the Secretary of State.

The CAG met on the 3rd and 4th October and reviewed several applications submitted by NHS England. NHS England requested an extension to our previous application (CAG 2-03(a)/2013), which covers the use of specified data sets for specific commissioning purposes. At the time of going to press, we are awaiting the outcome of CAG's deliberations and the Secretary of State's decision. Any approval is likely to include a series of milestones and is part of a managed change process now underway to move to using pseudonymised and de-identified data or to seeking consent.

Work is also underway to clarify and provide additional information for a Section 251 application to support risk stratification. Finally, we submitted an application to support work around the Winterbourne View scandal and to establish a register of patients with similar vulnerabilities. We will report on the outcome of our applications in the next issue of this bulletin. In the meantime, please

See http://www.hra.nhs.uk/about-the-hra/what-we-do/section-251/ for more information about of role of the CAG.

Invoice Validation

The major focus of our work over the last few weeks has been to support the processes required for invoice validation. We have broken down this topic into the following issues:

1. clarifying the different steps or questions that need to be addressed as part of invoice validation;
2. determining what information is really required for each of these steps
3. establishing how each step might be delivered lawfully
4. considering the processes and capabilities that will allow invoice validation to take place in practice.

We would like to thank everyone who contributed in our recent workshops on invoice validation. We have held discussions with staff from the Department of Health and the HSICIC to review our understanding of systems and current options. The extreme complexity of this topic means we are not quite ready to report on how we propose to solve this issue; however, we are developing guidance as a matter of the utmost urgency. We hope to provide more advice in the next issue of this bulletin.

2. Care.data work stream

The purpose of the care.data programme is to develop a modern data service for the health and social care system in England to provide essential information for patients, commissioners, researchers, clinicians and managers.

National Awareness Programme

It is crucial that patients and the public understand how their information is used for wider purposes beyond their direct care. People need to know about the benefits that their data can bring but also their choices, including their option to object and to have this objection respected.

On 15 October, NHS England and the HSCIC announced further details of a national public awareness campaign to support GPs in raising awareness of how information related to patients' care may be shared for secondary purposes, including for care.data. The awareness programme will include sending a leaflet to every household in England, along with a range of other awareness raising activities at national, regional and local level.

We are committed to raising awareness and would value the support of all those working in the NHS in cascading messages to your colleagues about the importance of data

sharing and rights of citizens.

Further information on care.data is available at: http://www.england.nhs.uk/ourwork/tsd/care-data/

3. System Change workstream

This work stream addresses issues of strategic information governance within the NHS

NHS standard contracts

Work has started on the IG aspects of the NHS standard contract, both to (a) clarify and improve the current provisions and (b) to address the government's and NHS England's commitments in response to Caldicott2. This work is expected to be completed before the end of this calendar year.

NHAIS

We have begun work to clarify the data controllership for the National Health Applications and Infrastructure Service (NHAIS) and for the Open Exeter System. This work will include a review of the mechanisms for granting access to these systems and of current access rights. NHS England's information governance teams, together with those of Public Health England and the HSCIC will need to be involved in this project. We recognise that there are access requirements for many different organisations and that these need to be resolved as quickly as possible; however, there are some strategic IG issues that need to be addressed before we can implement new mechanisms for granting access to these systems.

Digital patient identity management

Work has begun to support this programme that will facilitate patient access to their records and to transaction services such as appointment booking and ordering repeat prescriptions. This work will also include a review of the information governance controls related to telephone consultations, such as those provided through NHS 111.

Information Governance Toolkit Update

As we mentioned in issue 5 of this bulletin, changes to version 11 of the IG Toolkit (IGT) are due to be released by the end of October. These changes will incorporate the *20 Year Rule* of the Public Records Act and will improve SIRI reporting. Further work is in hand to incorporate relevant recommendations of Caldicott2. We have also begun initial discussions with colleagues from the Department of Health and the HSCIC to develop version 12 of the IGT for release in 2014.

An IGT change control process has been developed to establish a formal control mechanism to shape the future development of the IGT. As part of these developments, a change request form will be made available on the IGT site – initially to registered users only. To ensure the transparency of the process, all change requests and their outcomes will be displayed within the IGT site.

To facilitate the change control process an IGT Editorial Board has been established, whose minutes will be published within the IGT website. Consisting of key stakeholders, the responsibilities of this Board will be to:

- Agree a change control process for the IGT
- Review and undertake impact assessments on change requests
- Agree changes to the IGT
- Escalate changes to the ISCG IG sub group as necessary

The IG *Serious Incidents Requiring Investigation* (SIRI) reporting tool within the IGT has proved successful at capturing and managing incidents. Whilst we acknowledged that duplication exists with *Strategic Executive Information System* (STEIS) and local incident reporting systems, this duplication is unfortunately

necessary to ensure an integrated approach to incident management between IG teams and clinical quality teams. We will explore the possibility of integrating these systems as soon as is practicable.

Implementing the 20 year rule and corporate records management in the NHS

NHS Trusts' corporate records are a core resource to local communities for holding the NHS to account, and are of considerable value to researchers. The Francis Report highlighted a number of governance issues with corporate information at Mid Staffordshire NHS Foundation Trust, particularly relating to senior management information. As part of Trusts' statutory duties, they must ensure that corporate records are identified and managed throughout their lifecycle.

Government policy has recently changed in this field. In order to help assess the impact of this change on NHS Trusts, we will be conducting an information gathering exercise through the IG Toolkit. The exercise will begin this month and conclude by December 2013. It is important for relevant Trusts to provide accurate information as this is their opportunity to inform the impact assessment and subsequent implementation plan.

We have agreed with The National Archives and the HSCIC to collect data on volumes of corporate records in acute, mental health, ambulance and NHS community provider Trusts through the upcoming update of the IIGT. Again, the deadline is 31 December 2013. This exercise supports the impact assessment for the timing and logistics of introducing a 20-year rule, which covers the transfer of historical records to archives in line with wider government policy. The revised rule is already being introduced in other areas of the public sector and now the NHS must start to implement this revision.

Starting this month, a discrete section of the IGT will ask the relevant organisations for three measures of their corporate records, namely

1. Volumes for a mooted transition period to a 20 year rule from 2015-24
2. Volumes of backlogs against the present 30 year rule
3. Proportions of records normally selected for places of deposit under section 3 of the Public Records Act 1958.
4. We do not envisage any Trust with an attainment score of Level 2 or 3 against IGT requirement 604 having any difficulty with providing these metrics. The metrics will be combined with qualitative information from a small sample of trusts to assess financial and other impacts. Further information on the background to this issue is available at: http://www.nationalarchives.gov.uk/archives-sector/20-year-rule-and-records-of-local-interest.htm and more guidance will be available shortly.

4. Communications work stream

This work stream channels information produced by the other work streams in order to raise awareness, inform, and address myths; to disseminate solutions; and offer assurance that there is work underway to resolve IG problems in a co-ordinated way.

The post of substantive lead for communications for the programme has been advertised on NHS jobs. See http://www.jobs.nhs.uk/cgi-bin/vacdetails.cgi?selection=913207538 The closing date for applications is 20 October 2013.

Having distributed previous editions of this bulletin extensively to CCGs and commissioners within NHS England, we are now expanding

the distribution list to include providers as well. In addition, we will be working with other organisations that distribute to their networks, such as the NHS Confederation.

The task force's webpage remains our principal focus of communication and is the main place where FAQs are published; however, the HSCIC website is a further communications and dissemination hub. Recipients of this bulletin are strongly encouraged to send the bulletin on to their own local networks and to any of their contacts that may have an interest in the topics covered.

See our webpage at: http://www.england.nhs.uk/ourwork/tsd/data-info/ig/

See the HSCIC website at: http://www.hscic.gov.uk/dataflowstransitionmanual

5. Programme management workstream

This work stream ensures internal co-ordination of NHS England's IG Taskforce

Dealing with individual queries

In the short term, we have prioritised work on developing IG solutions to Invoice validation over responding to individual queries. However, as more IG experts join the Task Force, we are reviewing the enquiries we have received and are preparing responses.

Welcome to Rob Milner who has recently joined the taskforce as an information governance specialist 2 days per week.

Rob previously worked as information governance manager for County Durham and Darlington PCTs. He has experience of information risk management, incident management, IG toolkit compliance, process redesign, and commissioning support unit development. In his substantive role within Durham, Darlington and Tees Area Team, Rob works as a contract manager within the public health commissioning team.

We are feeding our responses to queries into the IG Bulletin and the FAQs on our website.

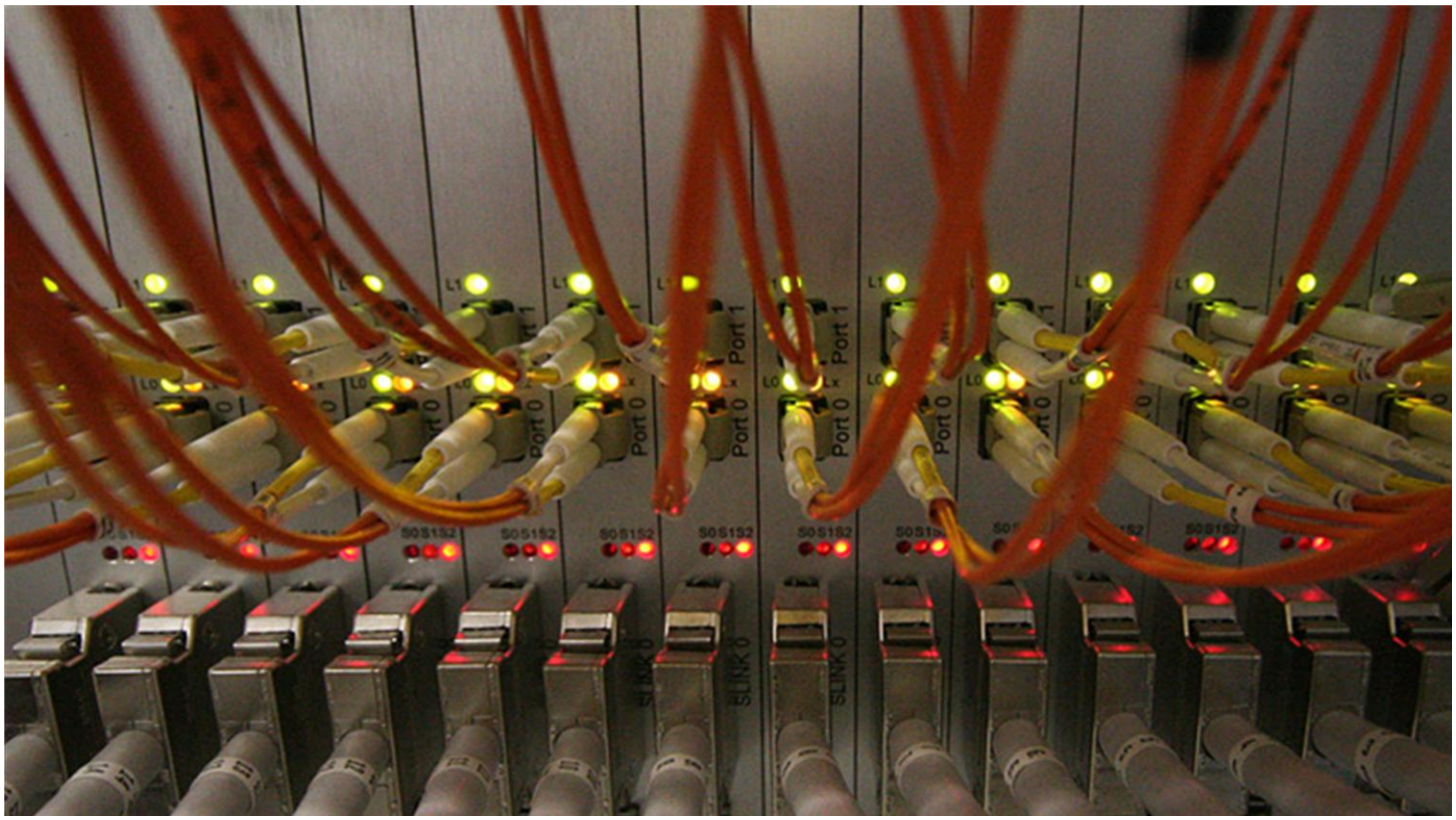
Frequently Asked Questions (FAQ's)

The Taskforce is receiving a large volume of queries. We are turning our responses to the most common queries into a series of FAQ's. In the last issue of the bulleting we published a selection of FAQs. However, as the number of FAQ's being generated is increasing each week, there is a danger that that the bulletin would become very lengthy. So instead we have decided to provide these links to the FAQs online:

http://www.england.nhs.uk/ourwork/tsd/data-info/ig/faqs/ or

http://www.hscic.gov.uk/dataflowstransitionmanual

NHS England is committed to providing timely and useful information to support commissioning organisations in their day-to-day activities. We are working very closely with the HSCIC on the development of joint FAQ's to ensure that the advice we provide is current, that it provides clarification, and is delivered in a consistent manner. We are particularly keen to hear about local solutions that other organisations may be able to adopt and adapt. Kindly send any feedback or any new enquiries to England.information-governance@nhs.net.



Next issue

The next issue of the bulletin will ne on November 1st 2013.

We are keen to draw attention to new issues and new solutions, so we will include them in the newsletter as they arise.

Please let us know about any issues you think the task force should be addressing or any information you would like us to publicise.

The next issue of this briefing will include:

- Update from each of the task force's five work streams
- Further news on Section 251 applications
- New issues and priorities

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